Supreme Court, U.S.
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No. 96-1888

In The

Supreme Court of the United States

October Term, 1997

TYSON E. TATUM,

Petitioner,

v.

VANLINER INSURANCE COMPANY
OF FENTON, MISSOURI,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITIONER'S REPLY BRIEF

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ARGUMENT

The Respondent suggests to this Court that the issue in this underlying cause of action is insufficient to warrant the granting of a Writ of Certiorari. However, the ruling of the District Court and affirmation by the Court of Appeals undermines the uninsured motorist public policy of the State of Missouri. As such, the ruling has so far departed from the usual and accepted course of judicial proceedings so as to call for an exercise of this Court's supervisory power. Respondent's Brief cites the case of *Steele v. General Mills*, 329 U.S. 433 (1947), wherein this Court granted a Writ of Certiorari. "Whether the Circuit Court of Appeals' judgment does undermine the transportation policy of Texas is a question of such importance that we granted certiorari to review the case", *Steele* at page 438. Likewise, whether the District Court's judgment undermines the uninsured motorist policy of the State of Missouri is a question of such importance that this Court should grant certiorari to review the case.

The Respondent has consistently cited cases that deal with a single tortfeasor rather than joint tortfeasors. The distinction is of importance because there is no case law in the history of Missouri which permits a settlement with one tortfeasor to reduce the policy limits of the different joint tortfeasor. The cases of *Moreland v. Columbia Mutual Insurance Company*, 842 S.W.2d 215 (Mo.App. 1992) and *Ragsdale v. Armstrong*, 916 S.W.2d 783 (Mo.Banc. 1996) are prime examples of cases involving single tortfeasors. They did not involve joint tortfeasors. The case at bar involves joint tortfeasors. This fact makes *Moreland* and *Ragsdale* distinguishable and clearly inapplicable to the case at bar.

Moreland merely involved a pro rata distribution of payments by differing uninsured motorist carriers based upon the negligence of a single tortfeasor. "Where there are several 'layers' or 'stacks' of automobile insurance coverage available to respond to the same injury or death, Missouri Courts have held that the insurers involved are obliged to contribute pro rata to the loss to the extent of their combined coverage, *Moreland* page 225. *Moreland* dealt with pro rata contribution of differing uninsured motorist carriers for the same negligent act by the same tortfeasor. *Moreland* provides no authority for the proposition that a settlement with one tortfeasor causes a reduction in the policy limits based upon the negligence of a different joint tortfeasor.

As demonstrated in the Petition for Writ of Certiorari, *Ragsdale* is clearly inapplicable to the case at bar. There was but one tortfeasor in *Ragsdale*. The real issue was whether the tortfeasor was, in fact, an uninsured motorist. There is no authority for taking a settlement with one tortfeasor and reducing the policy limits for a second tortfeasor.

On page 8 of the Respondent's Brief, they allege that it is the Petitioner's position that the uninsured motorist policy limits would always be recoverable regardless of damages. This is not the Petitioner's position. The Petitioner would be entitled to uninsured motorist compensation only if the damages would support such a verdict. However, the damages sustained by the plaintiff have never been set by Judge nor jury. The prior claim against National Carriers was settled.

Total damages have never been assessed in the case at bar. This fact makes *Moreland* and *Ragsdale* inapplicable. In *Moreland* the jury assessed the damages and then the Court determined the pro rata contribution amongst differing uninsured motorist carriers. In *Ragsdale* the Court assessed the damages and then entered a verdict based upon the uninsured motorist coverages. Since total damages have never been assessed, we do not know whether Mr. Tatum has received full compensation.

The Respondent has inferred that the Plaintiff has received total compensation because the Plaintiff's recovery exceeded his medical expenses by approximately 800 percent. This misleading statement ignores Mr. Tatum's surgery; his period of rehabilitation; the fact that Mr. Tatum had to retire as a truck driver years earlier than he had anticipated and his other elements of damage. Although the Appellant has not received full compensation, it is not the Petitioner's nor Respondent's function to determine whether Mr. Tatum has been fully compensated. That should be determined by a Judge or jury. Once a Judge or jury has made a determination as to total damages, we will then know if Mr. Tatum has been fully compensated.

The Petitioner has cited the Missouri Statute on joint and several liability R.S.MO. §537.060. The Respondent somehow feels this statute bolsters their position. However, this statute provides that "when an agreement by release . . . is given in good faith to one of two or more persons liable in tort . . . such agreement shall reduce the *claim* by the stipulated amount . . . " (emphasis added)

As can be seen, this statute does not reduce one of the tortfeasors' policy limits, it only reduces the amount of the claim. Once again, the amount of the claim or the damages has not been assessed by Judge or jury. This statute provides no support for the position of reducing one tortfeasor's policy limits based upon the settlement with a different joint tortfeasor.

Additionally, this statute has no application to the case at bar. "The right of the injured party to recover from an uninsured motorist carrier arises from the insurance contract rather than in tort," *Automobile Club Insurance Exchange v. Farmers Insurance Company,* 646 S.W.2d 838 (Mo.App. 1982); *Elfrink v. Burlington Northern Railroad Company,* 945 S.W.2d 607 (Mo.App. 1992). "The statute is only applicable as between tortfeasors and does not address the liability under contract only," *Hagedorn v. Adams,* 854 S.W.2d 470 (Mo.App. 1993).

Petitioner requests this Court to grant his Petition for Writ of Certiorari. The decision of the District Court and the affirmation of the Federal Court of Appeals will undermine the uninsured motorist public policy of Missouri.

> . . . the Public Policy of Missouri now declares that the minimum benefits . . . without diminishment, be available to an insured injured by an uninsured motorist. It also means that the insurance policy provision which designs to restrict the insured from these benefits evades the purpose of the statute and is void against public policy, *Craig v. Iowa Kemper Mutual Insurance Company,* 565 S.W.2d 716 (Mo.App. 1978).

There is a " . . . strong public policy underlying the uninsured motorist coverage statute, *Moreland* page 225. To permit the District Court decision to stand will defeat this strong public policy and undermine the uninsured motorist policy of the State of Missouri. The decision of the District Court prevents an individual from being in the same position as he would have been had he been injured by an insured motorist.

CONCLUSION

Petitioner requests this Court to enter an Order granting his Writ of Certiorari.

Respectfully submitted,

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